THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

ANN GROCHMAL, Complainant, vs. AMERICAN INSTITUTE FOR ECONOMIC RESEARCH, GREGORY M. VAN KIPNIS AND JEFFREY TUCKER Respondents.	:	MCAD No. 21SEM00411 EEOC No. 16C-2022-00919

RESPONDENTS' AMERICAN INSTITUTE FOR ECONOMIC RESEARCH AND GREGORY M. VAN KIPNIS, ANSWER AND POSITION STATEMENT[1]

In April 2021, Complainant submitted a lengthy complaint to Respondent Gregg van Kipnis[2], Chair of the Board of Trustees, that centered on the conduct of her colleague, (and now Respondent) Jeffrey Tucker.[3] Respondent van Kipnis promptly hired an outside investigator. During the investigation, Tucker resigned and then President Edward Stringham was terminated. Shortly thereafter, Complainant was promoted and awarded a 10% salary increase. However, inexplicably, she abruptly quit a few weeks later.

Complainant cynically casts herself as a victim in her Charge of Discrimination. She is not a victim.

Respondents, American Institute for Economic Research ("AIER") and van Kipnis (together, "Respondents"), vehemently deny Complainant's allegations that they discriminated against her on the basis of religion and gender, subjected her to sexual harassment and retaliated against her because they are either false or utterly devoid of legal merit. Accordingly, this Charge should be dismissed.

[1] This Answer is based upon Respondents' current understanding of the facts and is submitted for the purpose of aiding the Commission in its investigation and facilitating the informal resolution of this matter. Respondent does not waive, and hereby reserves, any and all substantive and procedural defenses that may exist to the subject Charge and incorporated allegations.
[2] The complaint was also sent to Trustee Katherine Delay.
[3] The undersigned do not represent Respondent Jeffrey Tucker.

ANSWER

The particulars are:

I, Ann Grochmal, the Complainant, believe American Institute for Economic Research, Gregory M. Van Kipnis, and Jeffrey Tucker, the Respondents, discriminated against me on the basis of my Religion; Gender; subjected me to Sexual Harassment; and in Retaliation for opposing discriminatory practices. This is in violation of M.G.L. 151B, Section 4, Paragraphs 1, 4, 16A, and Title VII.

ANSWER: No answer to the subjective beliefs and legal assertions in this un-numbered Paragraph is required. If an answer is required, Respondents deny same.

1. Ann Grochmal charges Respondents with unlawful discrimination on the basis of gender, including but not limited to sexual harassment, religion, hostile work environment and retaliation in violation of M.G.L. c. 151B and other applicable state and federal laws and regulations.

ANSWER: No answer to the subjective beliefs and legal assertions in this Paragraph 1 is required. If an answer is required, Respondents deny same.

2. Mrs. Grochmal is a female.

ANSWER: Respondents admit that Complainant is a female.

3. Mrs. Grochmal began working for the American Institute of Economic Research ("AIER"), a Libertarian Think Tank, in August 2019 as the Academic Program Administrator.

ANSWER: Respondents deny that AIER is a Libertarian Think Tank but admit the remaining allegations contained in Paragraph 3.

4. She performed her job in a proficient manner throughout her employment.

ANSWER: Respondents admit only that Complainant's job performance was satisfactory and not a basis for any adverse employment action against her.

5. One aspect of her job duties entailed overseeing the Internship, Visiting fellow and Visiting Scholar Programs, which included managing travel, visitation, residential, and workplace community experiences for the interns, fellows and scholars during their stay at AIER. Additionally, Mrs. Grochmal coordinated logistics planning for on and off campus academic conferences, including the application process, travel and event activities.

ANSWER: Respondents generally admit the allegations contained in Paragraph 5.

6. AIER has a large campus, which consisted of a number of buildings, including an office, a library, an adjoining stone manor house, detached apartments and a gatehouse in Great Barrington, Massachusetts.

ANSWER: Respondents generally admit the allegations contained in Paragraph 6.

7. In a most unorthodox practice, AIER houses many of its employees, interns and affiliated professionals on the premises, which by AIER's design, causes their homelife and work life to be entwined.

ANSWER: Respondents admit only that AIER houses employees, interns, and affiliated professionals on its premises. Respondents deny the remaining allegations contained in Paragraph 7.

8. AIER leadership designed and exploited this living arrangement so that they could require the staff, fellows, scholars and interns to attend mandatory socialization events in the manor, drink alcohol with them and be an audience for the orations and diatribes of AIER leadership.

ANSWER: Respondents deny the allegations contained in Paragraph 8.

9. AIER leadership, including but not limited to former President Edward Stringham and former AIER Editorial Director Jeffery Tucker, routinely organized bacchanalian drinking parties at the manor, bought (with AIER money) and supplied alcohol to AIER staff, affiliated professionals and often to underage interns, and made sexual overtures toward and sexualized statements about women present, from the workplace and from the professional arena.

ANSWER: Respondents deny the allegations contained in Paragraph 9.

10. Then AIER Program manager, Brad DeVos, attended some of these parties and witnessed first-hand these sexualized interactions with staff and interns, which were on public display on AIER premises.

ANSWER: Respondents deny the allegations contained in Paragraph 10.

11. AIER management pressured female interns and staff to attend the after-work cocktail parties held at 4:30pm every day and movies being shown at AIER at night. If the female employees did not show up, management asked them why they were not there. Management sent messages to the female staff via the work messaging system "Slack" pressuring them to come. This same pressure was not applied to the male employees.

ANSWER: Respondents deny the allegations contained in Paragraph 11.

12. Female interns, fellows and scholars worried that if they did not show up and drink with AIER management, their positions might be prematurely terminated and/or they would not be hired for permanent positions.

ANSWER: Respondents have no way to know what "worried" unnamed fellows and scholars referenced in this paragraph and so they must deny the allegations contained in Paragraph 12.

13. AIER leadership and senior staff stood by and took no action while former AIER Editorial Director Jeffery Tucker dressed the female staff members, interns and other affiliated writers up in old fur coats bought from estate sales by Jeffery Tucker and paid for by AIER. Later the pressure to wear and model pearl necklaces was also introduced by Jeffery Tucker.

ANSWER: Respondents deny the allegations contained in Paragraph 13.

14. AIER leadership, including but not limited to Jeffery Tucker and Edward Stringham, would insist that the women model the furs and then ogle the women and gape at them, asking the males and females in attendance, i.e., the females' coworkers and managers, "Isn't' she beautiful?" and "Doesn't she look lovely dressed like this?".

ANSWER: Respondents deny the allegations as written in Paragraph 14.

15. Jeffery Tucker offered a fur coat to a visiting scholar and told her he wanted her to wear one. He told her he buys them for "women in the house".

ANSWER: Respondents have insufficient information as to the truth or falsity of this vague allegation, and so, they deny it.

16. Jeffery Tucker routinely told the women in attendance at AIER happy hours and dinners how to sit and act, as if they were dolls he was positioning.

ANSWER: Respondents deny the allegations contained in Paragraph 16.

17. AIER management and its Board of Directors knew about this behavior and either engaged in it or took no action to stop it.

ANSWER: Respondents deny the allegations contained in Paragraph 17.

18. In the spring of 2020, Mrs. Grochmal complained to the AIER Human Resources department about this behavior, but no action was taken.

ANSWER: Respondents deny the allegations contained in Paragraph 18.

19. A research associate at AIER asked Mrs. Grochmal if she knew about a woman who had sued Jeffery Tucker for sexual harassment and said that he knew that Jeffery Tucker had been terminated from previous positions for sexual misconduct before AIER hired him.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 19 and therefore Respondents deny same.

20. Jeffery Tucker openly told the interns, visiting fellows, scholars, conference attendees and staff members about his prior lawsuits for sexual harassment and called the women "tramps" and that they only wanted money.

ANSWER: Respondents deny the allegations contained in Paragraph 20.

21. In May 2020, Jeffery Tucker told Mrs. Grochmal that he had previously been sued for sexual harassment at AIER and the woman was a "slut" and a "gold digger".

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 21 and therefore deny same.

22. Starting in the late winter of 2020 and continuing throughout her employment at AIER, Mrs. Grochmal also complained multiple times to her boss, Brad DeVos, about the sexual harassment and sexually hostile environment. He responded that Mrs. Grochmal should "not get involved". He stated that Jeffery Tucker had done this at his previous jobs and that it was only a matter of time before Jeffery was his own demise. He took no action.

ANSWER: Respondents deny the allegations contained in Paragraph 22.

23. Circa November/December 2020/January 2021, a female employee was washing dishes in the AIER Gatehouse when Jeffery Tucker came up behind her and started massaging her. The intern told Human Resources who sent a Slack (internal messaging system) message stating that employees were not to give massages to each other. No other action was taken and AIER deleted the Slack message.

ANSWER: Respondents have insufficient information at this time to admit or deny the allegations contained in Paragraph 23. Further answering, Gail Roger has no recollection of the female employee informing her of the alleged incident or that she (Roger) sent a Slack message or later deleted it as alleged.

24. In the late winter 2020/early spring of 2021, there were physical and verbal fights between upper management and their staff lovers in AIER buildings.

ANSWER: Respondents deny the allegations contained in Paragraph 24.

25. Mr. Tucker often intimidated employees who were not receptive to his sexual overtures.

ANSWER: Respondents deny the allegations contained in Paragraph 25.

26. On many occasions but more aggressively in early 2021 Jeffrey talked to the interns, fellows and employees about his sexual and romantic relationships with their co-workers, which made them uncomfortable.

ANSWER: Respondents deny the allegations contained in Paragraph 26.

27. Jeffrey also talked to the interns, fellows and employees about another member of senior management having a sexual relationship with an intern and Jeffrey Tucker called the intern a "tramp".

ANSWER: Respondents deny the allegations contained in Paragraph 27.

28. On January 27, 2021, an intern reportedly abruptly left AIER and ceased working there after Jeffrey Tucker, while wearing only his boxer briefs, pulled the intern and another girl into his bedroom.

ANSWER: Respondents deny the allegations contained in Paragraph 28. Further answering, the intern Complainant is referencing left the AIER campus abruptly to deal with a personal matter, and further expressed her gratitude to AIER and desire to return in the future ("Already looking forward to when I can come back."). *See Exhibit B: January 27, 2021 Slack Messages.* Complainant received and responded to the intern's Slack messages, which she forwarded to AIER's Director of Human Resources, Gail Roger, upon Roger's request.

29. Circa January/February 2021, Jeffrey Tucker sat at the lunch table at AIER and talked openly to everyone at the table about how he had two girlfriends at work and couldn't decide which one to date.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 29 and therefore deny same.

30. In February 2021, at the AIER lunch table, Jeffrey Tucker was publicly sexually groping a writer paid by AIER with whom he was involved.

ANSWER: Respondents deny the allegations contained in Paragraph 30.

31. On February 19, 2021, Jeffrey Tucker excitedly told Mrs. Grochmal a story about a young woman who was supposed to be doing a Skype interview with him but instead she began taking her clothes off.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 31 and therefore Respondents deny same.

32. When Mrs. Grochmal did not react favorably to this story, Jeffrey Tucker went to the next desk and told another female employee the same story.

ANSWER: Respondents deny the allegations contained in Paragraph 32.

33. Mrs. Grochmal was also pressured to wear the furs, being told before leaving for a business trip on February 24, 2021 by Jeffrey Tucker: "Wear this fur, you'll be beautiful, look at how she looks (indicating another woman in the group)." Mrs. Grochmal refused,

and Jeffrey Tucker responded: "Well how about this stole?" In response, Mrs. Grochmal left.

ANSWER: Respondents deny the allegations contained in Paragraph 33.

34. This sexually charged atmosphere was constant and omnipresent, pervasive throughout the Stonehouse, the offices, on campus and during off campus work trips.

ANSWER: Respondents deny the allegations contained in Paragraph 34.

35. Throughout Mrs. Grochmal's employment, AIER leadership made sexual comments at work in Mrs. Grochmal's presence and in front of other employees as well and spoke about their sexual conquests and women in a disparaging manner.

ANSWER: Respondents deny the allegations contained in Paragraph 35.

36. Many of the interns, visiting fellows, scholars and event participants were perplexed and frightened by this behavior and told Mrs. Grochmal as much.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 36 and therefore deny same.

37. Both AIER leadership and the Board of Directors for AIER knew of the excessive drinking parties, the drunk driving in the community by AIER leadership and staff and the rampant sexually hostile environment at AIER.

ANSWER: Respondents deny the allegations contained in Paragraph 37.

38. An AIER Board Member told a young person at AIER to be "careful" at AIER because Jeffrey Tucker could be "aggressive" and a "predator".

ANSWER: Respondents deny the allegations contained in Paragraph 38.

39. AIER's Board of Directors, including Chairman Gregory van Kipnis, knew of Jeffrey Tucker and Edward Stringham's sexually inappropriate behavior at work and allegations of sexual harassment against them at AIER and they took no action to remove either of them, thereby tacitly condoning their behavior.

ANSWER: Respondents deny the allegations contained in Paragraph 39.

40. Jeffrey Tucker repeatedly said: "We have no rules at AIER."

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 40 and therefore deny same.

41. In March 2021, Jeffrey Tucker was observed kissing an employee of AIER subsidiary AIS in one of the main common rooms at AIER.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 41 and therefore deny same.

42. On March 3, 2021, as well as on numerous other occasions, Jeffrey Tucker pressured Mrs. Grochmal to compliment the women wearing the furs: "Tell her she looks beautiful."

ANSWER: Respondents deny the allegations contained in Paragraph 42.

43. On March 11, 2021, at the lunch table at AIER, Jeffrey Tucker again told to Mrs. Grochmal and two interns, the story of the female who allegedly took her off her clothes while on a Skype interview with Mr. Tucker.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 43 and therefore deny same.

44. On March 16, 2021, the AIER Human Resources manager approached Mrs. Grochmal to ask about the intern who left AIER abruptly due to sexual harassment, referenced in para. 28 above. The Human Resources manager said that the intern left because she was being called "honey" and "sweetie" and that the manager believed that it was Jeffrey Tucker who perpetrated the sexual harassment and that she "wouldn't be surprised" because there had been another sexual harassment suit against Jeffrey Tucker.

ANSWER: Respondents deny the allegations contained in Paragraph 44.

45. Jeffrey Tucker's sexualization of the atmosphere at AIER and objectification of the women at AIER sent the message to other males at AIER that making sexual overtures at work was acceptable and encouraged. Jeffrey Tucker would publicly pressure AIER employees to have romantic relationships, which made them uncomfortable.

ANSWER: Respondents deny the allegations contained in Paragraph 45.

46. Jeffrey Tucker pressured the interns, fellows and staff members to attend communal dinners after work and drink alcohol.

ANSWER: Respondents deny the allegations contained in Paragraph 46.

47. AIER allowed Jeffrey Tucker to perform the final Skype interviews for internship and fellow candidates, which he insisted on doing so he could ensure that the candidates fit into the AIER "house culture", which at that time consisted of drinking and a sexualized environment.

ANSWER: Respondents deny the allegations contained in Paragraph 47.

48. Some interns were so afraid of AIER management that when alone in their room on AIER property, they would prop a chair up under the doorknob to securely lock the door because they knew there was an easily accessible master key and were afraid someone might use it to enter their room and make sexual advances.

ANSWER: Respondents deny the allegations contained in Paragraph 48.

49. At night, Jeffrey Tucker would routinely come up to the third floor of the Manor House, where the interns and young female employees slept, and knock on the door of his mistress, an AIER intern.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 49 and therefore deny same.

50. Lou Eastman, who would later be promoted by AIER Chairman van Kipnis to Vice President of AIER, would often go upstairs to the third floor of the manor where the female interns lived under the guise of bringing them coffee. The interns were uncomfortable because they were often coming out of the shower and not fully dressed when he would enter the living space.

ANSWER: Respondents deny the allegations contained in Paragraph 50.

51. On April 1, 2021, Mrs. Grochmal learned from an intern that Jeffrey Tucker brought up to her Dierdre McClosky's book *Crossing,* which details the author's journey crossing the gender line. Jeffrey Tucker stated that the book addressed how someone who changes gender cannot feel sexual pleasure and repeatedly talked about what it's like to feel sexual pleasure and asked the intern her thoughts, which made her uncomfortable.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 51 and therefore deny same.

52. Many interns stated that there was significant and constant pressure by management to drink at AIER.

ANSWER: Respondents deny the allegations contained in Paragraph 52.

53. A Senior Research Fellow asked an intern if she was ok being in the back seat of a car with AIER President Edward Stringham because he was known to be "handsy".

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 53 and therefore deny same.

54. Jeffrey Tucker attended a Students for Liberty event and invited the undergraduate students to come back to AIER and drink for the evening. Ten to fifteen students came and were served alcohol then these students proceeded to drive back to Connecticut.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 54 and therefore Respondents deny same.

55. There were also discriminatory comments made at AIER regarding religion.

ANSWER: Respondents deny the allegations contained in Paragraph 55.

56. At AIER in April 2021, Mr. Tucker described a Catholic intern as a "self-righteous" Catholic convert who cannot hold his tongue and is "holier than thou and [Tucker] can't stand him and can't wait for him to leave."

ANSWER: Respondents deny the allegations contained in Paragraph 56.

57. Jeffrey Tucker came into Mrs. Grochmal's office the next day talking about "these overly zealous Catholics" and their strong beliefs making trouble for him. She told him she was Catholic, and he responded: "You know how overly zealous people who convert to Catholicism can be."

ANSWER: Respondents deny the allegations contained in Paragraph 57.

58. Mrs. Grochmal is religious and felt offended and concerned.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 58 and therefore Respondents deny same.

59. On April 19, 2021, because Mrs. Grochmal was not getting any results from Human Resources or management of AIER, she sent a 12-page letter to the AIER Board of Directors, detailing the discrimination and toxic environment. (Attached hereto as Exhibit 1.)

ANSWER: Respondents admit only that Complainant sent a letter to Gregory van Kipnis, Chairman of the Board of Trustees, and Katherine Delay, a Trustee, on April 19, 2021, which letter speaks for itself. *See Exhibit A: Complainant's April 19, 2021 Letter.* Respondents deny the remaining allegations contained in Paragraph 59. The actions taken by Respondents in response to Complainant's letter are set forth in detail in their Position Statement below.

60. On April 20, 2021, the Chairman of the AIER Board, Gregory van Kipnis, called Mrs. Grochmal to discuss the allegations in her April 19, 2021 letter and said he was concerned about the religious discrimination and the underage drinking. He said he was also concerned about the other issues mentioned, i.e., the pervasive and explicit sexual harassment, but he was most concerned about the religious and underage drinking aspect because he felt that they were "legal issues".

ANSWER: Respondents admit only that, on April 20, 2021, Complainant and van Kipnis spoke on the phone regarding her April 19, 2021 letter. Respondents deny the remaining

allegations contained in Paragraph 60. Further answering, during their brief April 20, 2021 phone conversation, van Kipnis acknowledged receipt of Complainant's letter and expressed his appreciation for her bringing the issues raised in the letter to his attention. He further informed Complainant that AIER had hired an attorney to conduct an investigation into the issues raised in her letter and requested her cooperation in the investigation. At no point did van Kipnis opine on the seriousness of her complaints or describe some, but not all, as "legal issues."

61. Mr. van Kipnis then gave Mrs. Grochmal lip service about how disappointed he was in AIER management, including Human Resources and Mrs. Grochmal 's manager, Brad DeVos, for not responding to her prior complaints about the rampant discrimination and illegal activities at AIER.

ANSWER: Respondents deny the allegations contained in Paragraph 61. See Answer No. 60 above.

62. However, Mr. van Kipnis then said: "You know, this is the 'Old Boys' Network', you wouldn't understand it." When Mrs. Grochmal brought up that the other males in power sat back and allowed it to happen, Mr. Van Kipnis said: "Well, they just want to be "cool" like Jeff and Ed."

ANSWER: Respondents deny the allegations contained in Paragraph 62.

63. Mrs. Grochmal told Mr. van Kipnis that she was concerned for the safety of both herself and the female employees at AIER and asked that her identity and the fact that she wrote the letter be kept confidential - to be used only by the AIER Board of Directors.

ANSWER: Respondents generally admit the allegations contained in Paragraph 63.

64. Mr. van Kipnis assured Mrs. Grochmal that he would keep her identity and the fact that she had sent the letter to him private, however Brad DeVos told Mrs. Grochmal that Gregory van Kipnis immediately called him and told him that Mrs. Grochmal had written a 12-page letter to the Board complaining about the drinking and sexualized environment at AIER.

ANSWER: Respondents deny the allegations contained in Paragraph 64. Further answering, van Kipnis did not assure Complainant that her identity or her April 19, 2021 letter would be kept confidential, because he understands that employers cannot – and should not – guarantee anonymity or blanket confidentiality when it comes to allegations of the nature contained in Complainant's letter. Complainant's identity and letter were shared on a need-to-know basis, which included DeVos, so appropriate actions could be taken in response. The actions taken by Respondents in response to Complainant's letter are set forth in detail in their Position Statement below.

65. Furthermore, this information was also published to Mrs. Grochmal's co-workers. Mrs. Grochmal soon heard gossip around the office about how she had sent the Board the "12-page letter" complaining about the alcohol fueled sexualized work environment at AIER.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 65 and therefore deny same. Further answering, see Answer No. 64 above.

66. Then, Gregory van Kipnis copied Mrs. Grochmal's personal email address on an email to the Board, senior management, and two facilities workers regarding the removal of all alcohol from campus. Based on her level within the organization, Mrs. Grochmal should clearly not have been copied on that email and Mr. van Kipnis's inclusion of her exposed her as the person who complained to the Board.

ANSWER: Respondents admit that van Kipnis sent an email and inadvertently *blind* copied Complainant's personal email address, but deny the implication that his intention was to expose her as the person who complained to the Board.

67. After Gregory van Kipnis published the fact that Mrs. Grochmal had complained of discrimination, she was retaliated against. Mrs. Grochmal was ostracized at work by AIER management and her co-workers. Many employees would no longer speak to Mrs. Grochmal at work. This also interfered with Mrs. Grochmal's ability to perform her job, as some employees traveling to campus who were aligned with AIER management would not notify her that they were coming and hence she could not arrange for their on-campus accommodations, which was a part of her job.

ANSWER: Respondents deny the allegations contained in Paragraph 67.

68. AIER requested that Mrs. Grochmal meet with its attorney to talk about her allegations.

ANSWER: Respondents admit the allegations contained in Paragraph 68.

69. Mrs. Grochmal told the attorney for AIER that in addition to Jeffrey Tucker and Edward Stringham, Brad DeVos also served alcohol to an underage intern on work premises and reportedly engaged in sexually suggestive interactions with interns and visiting fellows. Mrs. Grochmal also reiterated that she had repeatedly complained to Mr. DeVos about the discrimination and hostile work environment repeatedly for months and he took no action.

ANSWER: Respondents admit that Complainant told the attorney retained to investigate her allegations what she alleges in Paragraph 69, but Respondents deny that such allegations are true.

70. Upon information and belief, AIER offered Jeffrey Tucker the opportunity to resign in lieu of termination and he resigned in April 2021. However, AIER permitted Mr.

Tucker to continue to live on the premises for a week. Only after multiple employees raised numerous concerns to AIER that Mr. Tucker was still living on the campus with the employees did AIER finally remove him.

ANSWER: Respondents deny the allegations contained in Paragraph 70. Further answering, as admitted above, AIER houses employees, interns, and affiliated professionals on its campus. Throughout his employment, Tucker lived on AIER campus and needed to make alternative living arrangements before moving out. Tucker lived there for only two additional (2) days after his employment ended. AIER had no legal right to forcibly remove Tucker from its premises during that two-day period.

71. During a staff meeting held the Monday following Jeffrey Tucker's resignation, in further retaliation against Mrs. Grochmal, then President of AIER Edward Stringham announced at the meeting that "someone" had resigned and then proceeded to turn in his chair and stare at Mrs. Grochmal, who was sitting across the room to his left. He continued to stare at her as he spoke in glowing terms about the contributions Jeffrey Tucker had made to the organization, but never once used his name. Mrs. Grochmal felt extremely uncomfortable by Mr. Stringham's blatant and very public actions, and several other employees commented to Mrs. Grochmal about it. This made Mrs. Grochmal very uncomfortable.

ANSWER: Respondents deny the allegations contained in Paragraph 71.

72. Circa May 20, 2021, former AIER President Edward Stringham was terminated.

ANSWER: Respondents admit the allegations contained in Paragraph 72.

73. Mr. van Kipnis admitted during a staff meeting following Mr. Stringham's termination that AIER did not do proper due diligence on either Edward Stringham or Jeffrey Tucker before hiring them.

ANSWER: Respondents deny the allegations contained in Paragraph 73.

74. Despite Mrs. Grochmal telling Mr. van Kipnis and the AIER lawyer that not only had Brad DeVos taken no action in response to her complaints of discrimination and hostile work environment, he had actively participated in it, AIER and its Board of Directors promoted Brad DeVos to President of AIER.

ANSWER: Respondents admit only that DeVos was appointed to the position of Interim President of AIER. Respondents deny the remaining allegations contained in Paragraph 74. Further answering, after a thorough search, the Board of Trustees appointed William Ruger to the position of President of AIER on or about January 22, 2022.

75. Louis Eastman was promoted to Vice President.

ANSWER: Respondents deny the allegations contained in Paragraph 75.

76. AIER gave the semblance of banning alcohol in response to Mrs. Grochmal's letter, however Brad DeVos, now President of AIER, told Mrs. Grochmal that it was his priority to get alcohol allowed back on the AIER campus.

ANSWER: Respondents deny the allegations contained in Paragraph 76.

77. A drinking party was arranged on a neighbor's land and publicized on the AIER "Slack" channel. AIER Vice President Lou Eastman liked the post. Mrs. Grochmal complained to Brad DeVos and the post was removed. Public complaints and plans for how to get alcohol back on campus continued in daily office discussions and on Slack messages.

ANSWER: Respondents deny the allegations contained in Paragraph 77.

78. The men to whom Mrs. Grochmal complained and who did nothing, were promoted to the head of AIER leadership.

ANSWER: Respondents deny the allegations contained in Paragraph 82. Further answering, the actions taken by Respondents in response to Complainant's April 19, 2021 letter are set forth in detail in their Position Statement below.

79. The females to whom Mrs. Grochmal complained were allowed to remain in AIER leadership.

ANSWER: Respondents lack sufficient information to admit or deny the allegations contained in Paragraph 79 and therefore Respondents deny same. Further answering, Respondents deny the implication that the "female employees to whom Mrs. Grochmal complained" – whoever they allegedly are – should have been removed from their positions. The actions taken by Respondents in response to Complainant's April 19, 2021 letter are set forth in detail in their Position Statement below.

80. The Chairman of the AIER Board, when informed of gross and flagrant sexual harassment and deviance at AIER, responded that it was a "Boys Club" and Mrs. Grochmal "wouldn't understand".

ANSWER: Respondents deny the allegations contained in Paragraph 80.

81. No other avenues for complaints of the discrimination and hostile work environment remained.

ANSWER: Respondents deny the allegations contained in Paragraph 81 as drafted. Further answering, the actions taken by Respondents in response to Complainant's April 19, 2021 letter are set forth in detail in their Position Statement below.

82. AIER, on its official media account, repeatedly continued to publicly endorse Jeffrey Tucker and Edward Stringham following their disgrace and separation from the corporation.

ANSWER: Respondents deny the allegations contained in Paragraph 82.

83. AIER managers, including Lou Eastman, publicly endorsed Jeffrey Tucker and Edward Stringham at work and on social media, which signaled to the AIER employees that nothing had changed.

ANSWER: Respondents deny the allegations contained in Paragraph 83.

84. AIER Vice President Eastman made statements at AIER that he missed the "Good Old Days" of Mr. Tucker and Mr. Stringham and said: "Don't worry, Jeff Tucker and Ed Stringham will be back."

ANSWER: Respondents deny the allegations contained in Paragraph 84.

85. This all sent a clear message that AIER sided with the perpetrators of sexual harassment and discrimination and not the victims.

ANSWER: Respondents deny the allegations contained in Paragraph 85.

86. The sexual harassment, sexually hostile work environment, pressure to comply and join in with sexually charged alcohol-soaked culture at AIER was present for the duration of Mrs. Grochmal's employment.

ANSWER: Respondents deny the allegations contained in Paragraph 86.

87. AIER's condoning and ratification of the sexually hostile work environment made the working conditions so intolerable that Mrs. Grochmal could no longer work at AIER and was forced to resign. On October 2, 2021, Mrs. Grochmal was constructively discharged.

ANSWER: Respondents deny the allegations contained in Paragraph 87.

88. As a result of the discrimination, hostile work environment and retaliation perpetrated by Respondents, Mrs. Grochmal suffered from severe emotional distress in the form of stress, tension, depression, anxiety and sleeplessness.

ANSWER: Respondents deny the allegations contained in Paragraph 88.

89. For the foregoing reasons, Mrs. Grochmal charges Respondents with unlawful discrimination on the bases of gender discrimination including sexual harassment, religion, hostile work environment and retaliation in violation of M.G.L. c. 15IB and applicable state and federal law and regulations.

ANSWER: No answer to the subjective beliefs and legal assertions in this Paragraph 89 is required. If an answer is required, Respondents deny same.

POSITION STATEMENT

I. Factual Background

Founded in 1933, AIER is one of the oldest and most respected nonpartisan economic research and advocacy organizations in the country. With a global reach and influence, AIER is dedicated to developing and promoting the ideas of freedom and private governance by combining advanced economic research with accessible media outreach and educational programming to cultivate a better, broader understanding of the fundamental principles that enable peace and prosperity around the world. Each year, AIER hosts hundreds of guest scholars on its historic campus. These scholars participate in unique educational experiences, such as internship programs and various seminars.

AIER has a large campus in Great Barrington, Massachusetts. The campus consists of a number of buildings, including an office, a library, an adjoining stone manor house, detached apartments, and a gatehouse. AIER houses many of its employees, interns, affiliated professionals, and visiting scholars on its premises. Because many individuals lived on AIER premises, they tended to socialize outside of work hours, including dinners (on and off AIER campus), movie nights, and various other social events.

In August 2019, Complainant was hired as the Academic Programs Administrator. Complainant primarily oversaw the Internship, Visiting Fellow, and Visiting Scholar Programs, which included managing travel, visitation, residential, and workplace community experiences for the interns, fellows, and scholars during their stay at AIER. Complainant also handled the logistics planning for on and off campus academic conferences, including the application process, travel, and event activities. Complainant performed her job duties sufficiently.

On April 19, 2021, Complainant wrote a lengthy letter to Gregory van Kipnis, Chairman of the Board of Trustees, and Katherine Delay, a Trustee. *See Exhibit A: Complainant's April 19, 2021 Letter.* In her letter, Complainant made allegations regarding underage drinking, sexually-tinged conduct, inappropriate COVID-19 protocol. Prior to Complainant's letter, the Board of Trustees had not received any such complaints or allegations by Complainant or anyone else. After receiving the letter, van Kipnis sought approval from the Board of Trustees to retain an outside attorney to conduct an investigation into the allegations made in Complainant's letter. The Board approved the request and Attorney Lisa Brodeur-McGan was hired to investigate.

On April 20, 2019, van Kipnis called Complainant to acknowledge receipt of Complainant's letter and express his appreciation for bringing the issues raised in the letter to his attention. He further informed Complainant that AIER had hired an attorney to conduct an investigation into the issues raised in her letter and requested her cooperation in the investigation. Complainant agreed to cooperate. Over the next month or so, Attorney Brodeur Mc-Gan reviewed more than 400 pages of documents, mostly supplied by witnesses, and interviewed 25 witnesses, including but not limited to Complainant and Complainant's husband.

On April 26, 2021, while the investigation was ongoing, van Kipnis banned alcohol on AIER campus. If alcohol consumption on AIER premises was a problem, or contributing to other problems, van Kipnis did not want that activity to continue. He emailed employees in facilities and instructed them to gather and lock away all alcohol found on campus. In error, Mr. van Kipnis *blind* copied Complainant's personal email. The email did not discuss Complainant, her April 19, 2021 letter or any of the allegations contained therein. Given Complainant's allegations regarding lack of security in the residence halls, van Kipnis also directed that pass keys to residence rooms be verified as secure. By April 29, 2021, van Kipnis received confirmation from facilities that all alcohol had been locked away and all pass keys to residence rooms were secure.

Before the investigation was completed, Jeffrey Tucker resigned on May 3, 2021. During his employment, Tucker lived on AIER campus and so he needed to make alternative living arrangements before moving out. Tucker moved off AIER campus on May 5, 2021, just two days after he resigned. After discussing the findings of the investigation with Attorney Brodeur-McGan, the Board determined that then-President Edward Stringham should be terminated. On May, 20, 2021, van Kipnis informed Stringham that his employment with AIER was terminated effective immediately.[4]

After Edward Stringham was terminated, Brad DeVos was appointed Interim President of AIER. In conjunction with the Board of Trustees, DeVos set out to foster a positive work environment. Mr. DeVos also reassured employees and others at AIER that they are welcome to make complaints to Human Resources, and that those complaints would be taken seriously, properly investigated, and that appropriate action would be taken to eliminate any unlawful or otherwise inappropriate behavior. Since Complainant's April 19, 2021 letter, AIER has not received any such complaints.

After the conclusion of the investigation, AIER ultimately determined that alcohol could be permitted again on AIER campus subject to a new policy to be drafted by Human Resources in consultation with AIER legal counsel. Thereafter, AIER's new Alcohol and Illegal Substances policy was implemented and remains in effect as of the date hereof. AIER had not received any complaints related to the presence or consumption of alcohol on AIER premises.

Between June and August 2021, AIER, through Attorney Brodeur-McGan, and Complainant, through her counsel, discussed an expanded role for Complainant at AIER, which would include an increase in compensation. On June 11, 2021, Complainant sent a lengthy letter to Attorney Brodeur-McGan regarding possible parameters of her expanded role. *See Exhibit C: Complainant's June 11, 2021 Letter.* In that letter, Complainant acknowledges the action steps the Board of Trustees had taken in response to her April 19, 2021 complaints: "The Board of AIER has recently taken serious and necessary remediation action with respect to the organization." *Id.* The negotiations between counsel continued, and at times occurred directly between DeVos and Complainant, until a job description outlining the parameters of Complainant's newly expanded role was created. Complainant signed the new job description

[4] Attorney Brodeur-McGan did not write a formal report of her investigation, findings or recommendations, and instead advised Respondents verbally. Respondents took all actions recommended by Attorney Brodeur-McGan.

accepting her new role on August 30, 2021. *See Exhibit D: Complainant's New Job Description.* Complainant was simultaneously informed that she would receive a 10% increase in her salary, plus a cost of living increase.

Given all AIER had done after receiving Complainant's April 19, 2021 letter, which Complainant and/or her attorney had acknowledged on several occasions, AIER was shocked to receive Complainant's resignation letter on September 24, 2021, which indicated a resignation date of October 1, 2021. *See Exhibit E: Complainant's September 24, 2021 Resignation Letter.* Although unclear on Complainant's reasons for resigning, AIER accepted Complainant's resignation.

II. Legal Argument

As detailed below, Complainant's legal claims are wholly without merit.

A. Complainant Was Not Sexually Harassed.

Complainant's sexual harassment allegations consist largely of hearsay allegations describing things that may have happened to unnamed other people which she did not witness. Many of her allegations also are completely lacking in specifics, *e.g.* Charge ¶ 35, which cannot be fairly answered by Respondents. It would offend basic notions of fairness and due process for the Commission to credit Complainant's vague and unreliable allegations.

There are just three sexual harassment allegations made by Complainant that are not infected by a lack of personal knowledge or specificity. They are: 1) Tucker encouraged her to wear a fur coat or stole telling her that she would look beautiful (Charge ¶ 33); 2) on March 3, 2021, Tucker "pressured" Complainant to tell "the women" wearing furs that they look beautiful (Charge ¶ 42); and 3) on March 11, 2021 Tucker told Complainant and two others about a woman who took off her clothes during a Skype interview with Tucker (Charge ¶ 43). These three allegations fail because they are each untimely[5] and insufficiently severe or pervasive to rise to the level of hostile work environment.

Chapter 151B defines "hostile work environment" harassment as: sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment. In a hostile work environment case, the complainant must prove:

- she was subjected to conduct of a sexual nature;

[5] The Charge indicates a filing date of February 8, 2022. Thus, these sexual harassment allegations fall outside of the 300-day limitations period because they each allegedly occurred before April 14, 2021, and thus these claims of sexual harassment are time-barred.

- the conduct of a sexual nature was unwelcome;
- the conduct of a sexual nature had the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment; and
- the conduct unreasonably interfered with complainant's work performance or altered the terms and conditions of the complainant's employment.

Tucker's comments were not sexual in nature. The Commission's Sexual Harassment Guidelines provide examples of conduct of a sexual nature. They include: "inappropriate touching; sexual epithets, jokes, gossip, sexual conduct or comments; requests for sex; displaying sexually suggestive pictures and objects; and leering, whistling, or sexual gestures." Tucker's alleged comments to Complainant do not fit within any of these examples. See *Guidelines* at pp.2-4.

Because there is no reasonable argument that Tucker's three comments to Complainant were severe, the only question is whether they were pervasive enough to be objectively offensive. They were not. To be considered pervasive, a complainant must prove that she was subjected to "a steady barrage of opprobrious [sexual] comment or abusive treatment." *Kelley v. Plymouth County Sheriff's Department*, 22 MDLR 208, at 214 (2000) (quoting *Carlton v. Worcester School Dept.*, 14 MDLR 1143, 1147 (1992)). Three comments over a twenty-month period of working together can hardly be characterized as a steady barrage. Tucker's comments are more accurately described as minor and isolated which do not constitute sexual harassment. *Id.* at 214-215. "A few isolated remarks over a period of time" are generally insufficient to meet the pervasiveness standard." *Id.* at 215. Tucker's comments to Complainant do not rise to the level of actionable sexual harassment.

Chapter 151B provides Complainant no remedy here because it does not prohibit all use of offensive language. See *Prader v. Leading Edge Products, Inc.*, 39 Mass. App. Ct. 616, 619-20 (1996).

B. Complainant Was Not Retaliated Against.

Complainant's claim that she was retaliated against for complaining about sexual harassment and culture is frivolous. To make out a *prima facie* case of retaliation, an employee must show that (1) she availed herself of a legally protected right; (2) she was adversely affected by an employment decision; and (3) there is a causal connection between the employee's protected activity and the employer's adverse employment action. *Randlett v. Shalala*, 118 F.3d 857, 862 (1st Cir. 1997). There were no adverse actions taken against Complainant after she submitted her complaint. On the contrary, she was promoted and given a 10% raise.

Complainant complained on April 19, 2021. AIER hired an outside investigator right away, and the investigator conducted a prompt and thorough investigation. As a result of which, Tucker resigned and Stringham was terminated. Thereafter, Complainant was given an expanded role at AIER, which she and her counsel played a significant role in crafting, and a substantial

pay increase. Less than a month later, Complainant abruptly resigned. Complainant was not adversely affected by any decision made by AIER.

1. AIER did not constructively discharge Complainant.

AIER did not force Complainant to quit. Indeed, if her decision to quit was in any way related to her complaint, it was patently unreasonable and attributable to her alone. Constructive discharge from employment occurs only when a reasonable person in the employee's position would have found working conditions intolerable and there is no longer any possibility of rescuing the employment relationship. *GTE Products Corp. v. Stewart*, 421 Mass. 22, 33-36 (1995); *Rubin v. Household Commercial Financial Services, Inc.*, 51 Mass. App. Ct. 432 (2001); *Keeler v. Putnam Fiduciary Trust Co.*, 238 F.3d 5 (1st Cir. 2001); *Ramos v. Davis & Geck, Inc.*, 167 F.3d 727, 732-33 (1st Cir. 1999); *Nunez-Soto v. Alvarado*, 918 F.2d 1029, 1030-31 (1st Cir. 1990). "The inquiry is objective: Did working conditions become so intolerable that a reasonable person in the employee's position would have felt compelled to resign?" *Pennsylvania State Police v. Suders,* 542 U.S. 129, 141, 124 S.Ct. 2342, 2351 (2004) (citations omitted). An employee faced with allegedly intolerable working conditions has the duty to act reasonably by giving the employer the chance to implement corrective changes. *DiLuca v. Communications & Power Industries, Inc.*, 65 Mass. App. Ct. 1106 (2005). Complainant did not do so here. "[A]n employee who quits without giving his employer a reasonable chance to work out a problem has not been constructively discharged." *Morrissey v. Holiday Inn,* 25 MDLR 74, 88 (Feb. 26, 2004) (Grooms, H.O.) (citations omitted), *aff'd* 25 MDLR 341 (2003).

C. Respondents did not discriminate against Complainant based on her Religion.

Complainant has opted for the "kitchen sink" approach to pleading with her spurious claim that she was discriminated against because she is Catholic. Even a cursory review of this claim reveals that it is frivolous and made in bad faith.

Of her eighty-nine allegations, just four reference religion and only two of those contain any factual allegations. The crux of these factual allegations is that Tucker complained to her in April 2021[6] about the self-righteousness of an intern who had converted to Catholicism. The next day, Complainant told Tucker that she was Catholic. To which, Tucker retorted: "You know how overly zealous people who convert to Catholicism can be (Charge at ¶¶ 56-57). *That's it.*

Complainant alleges she was offended and concerned by Tucker's remarks because she is religious yet she fails to explain how or why (Charge at ¶ 58). Because she does not allege that she suffered any tangible adverse employment action, Complainant's claim should be analyzed as one for religious harassment – hostile work environment type.

[6] This conversation must have occurred, if at all, before April 19, 2021, as it is referenced in Complainant's April 19, 2021 letter to Respondent van Kipnis. If it occurred before April 14, 2021, it falls outside of the 300-day limitations period, and her religious harassment claim is time-barred.

Even if Tucker made the remarks alleged – on the two occasions claimed – they fall far short of actionable religious harassment. It is well-settled that occasional comments and isolated incidents, unless extremely serious, are insufficient to constitute a pervasive, hostile work environment. *See, Massachusetts Commission Against Discrimination, et al. v. Herb Chambers 1186, Inc.* (Lawyers Weekly No. 22-023-19) (20 pages) (Waxman, Hearing Officer) (conduct such as discussing plans to attend a strip club after work, profanity, smoked pot, office gossip, and clothing that was tight or revealing, is insufficient to establish a case of sexual harassment); *Tardanico v. Aetna Life & Casualty Co.*, 41 Mass. App. Ct. 443, 450, 671 N.E.2d 510, 515 (App. Ct. 1996) ("[I]solated or ambiguous remarks, tending to suggest animus based on age, are insufficient, standing alone, to prove an employer's discriminatory intent." *Quoting, Fontaine v. Ebtec Corp.*, 415 Mass. 309, 314 n.7 (1993); *Blare v. Husky Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 447 n.9 (1995)).

To determine whether conduct is so severe and pervasive as to constitute a hostile working environment, our courts require consideration of: (1) the frequency of the alleged conduct; (2) the tenor and intensity of any degrading language used; (3) the presence of physical contact or intimidation; and (4) the overall atmosphere of the particular workplace. *Melnychenko v. 84 Lumber Co.*, 424 Mass. 285, 287 (1997); *Gnerre v. MCAD,* 402 Mass. 502, 508 (1998); *Ramsdell v. Western MA Bus Lines, Inc.*, 415 Mass. 673, 677 (1993). Clearly, the facts do not support a finding of severe or pervasive because the first three factors are not present here.

First, Tucker's remarks were not frequent. Two occasions, a day apart, where Tucker and Grochmal had worked together for more than twenty months cannot reasonably be argued to be frequent. Second, the language used by Tucker was not degrading. Even if his personal observation that recent converts to Catholicism can be overzealous was inaccurate or impolitic, it was not couched in degrading language. Third, Complainant does not allege that Tucker touched her or intimidated her when making the remarks complained of. Complainant cannot establish that the requisite factors which guide our courts and this Commission in determining whether conduct is severe or pervasive enough to create a hostile work environment were satisfied. Thus, there is no probable cause to conclude that Complainant was unlawfully harassed because she is Catholic.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Complainant has no reasonable likelihood of prevailing as some or all of her claims of sexual or religious harassment are time-barred.

Second Affirmative Defense

Complainant has no reasonable likelihood of establishing that she was subjected to a hostile work environment.

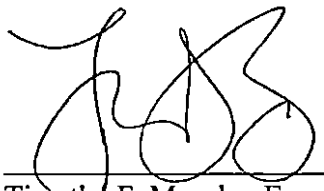
Third Affirmative Defense

Complainant has no reasonable likelihood of prevailing on her claim of retaliation as she was subjected to no adverse employment action after she engaged in protected activity.

CONCLUSION

This Charge should be dismissed without further investigation or delay because Complainant's claims are either false or frivolous and made in bad faith.

Respectfully Submitted,
For Respondents, American Institute for Economic Research and Gregory M. van Kipnis,



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